DOCUMENT RESUME

ED 261 478 EC 180 544

TITLE	Your Child's School Records.
INSTITUTION	Education Law Center, Inc., Newark, N.J.
PUB DATE	Oct 84
NOTE	8p.
AVAILABLE FROM	Education Law Center, Inc., Room 209, 155 Washington St., Newark, NJ 07102 ($0.50).
PUB TYPE	Guides - Non-Classroom Use (055)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	*Confidential Records; *Disabilities; Elementary Secondary Education; Federal Legislation; Parent Materials; State Legislation; *Student Records; Student Rights
IDENTIFIERS	New Jersey

ABSTRACT

Intended for parents or guardians of handicapped children in New Jersey, this paper explains parental rights regarding school records. The following four rights, their limitations and exceptions are discussed: (1) right to see and obtain copies of all records kept on the child; (2) the right to have inaccurate, incomplete, or irrelevant information corrected or removed from the records; (3) the right to prevent other people from seeing the records; and (4) the right to ask for a hearing should any of the above rights be denied. Legal sources are cited and parallels of state and federal laws on the topic are noted. (CL)

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YOUR CHILD'S SCHOOL RECORDS

As the parent or guardian of a child in New Jersey public school, you have certain legal rights concerning records kept by the school system on your child. As a general rule you have the right to:

- See and get copies of all records kept on your child.
- Have inaccurate, incomplete or irrelevant information corrected or removed from the records.
- Keep people outside the school from seeing your child's records.
- Ask for a hearing if any of these rights have been denied you.

As with most general rules, this one has many exceptions and limitations. A more detailed explanation of each of these rights follows.

Right to See and Copy Records

You have the right to examine, take notes and make copies of all pupil records kept on your child. "Pupil record" means any written information relating to a pupil gathered inside or outside the school system, no matter what the physical form of the information is.

The only exception to the rule that you may see and copy all records relating to your child kept by the school system is that you do not have to be shown notes made by a teacher or other school district employee for his or her

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own personal use. If information is reviewed by another individual, for example, a principal or another teacher, the information is a pupil record and you have a right to see it. All such records, even if marked "confidential" or otherwise treated as secret, must be shown to you if you request them. You may not, of course, see records concerning any other children in the school system.

You may examine standardized tests that your child has taken, but you may not make copies of test questions. This is because standardized tests are typically protected by copyright.

To see your child's records, you should contact your school principal for an appointment. During the time period between a written request to review records and the actual review, no record may be altered or destroyed. The school may take from 10 to 25 days to grant your request, although they generally will not take this long. When you go in to look at the records, a school employee must be present to answer any questions you have. If you are deaf or do not speak English, they must provide an interpreter or help you to find one.

If you wish to have copies of some or all of the records, the school must supply them, but they may, if they wish, charge you a reasonable fee for making the copies. If you cannot afford to pay this fee, however, they must give you the copies free of charge.

Annually, school districts must notify parents in writing of their rights with regard to pupil records. Upon request, districts must make available to you copies of state and federal record laws and regulations and the district's written policy.

When your child graduates, leaves school or moves from the district, the district must notify you in writing that it will provide the child's entire pupil record to you on request.

If your child is transferring to another school district, the old district may transfer only those records required to be kept by state law, unless you consent in writing to the transfer of any additional records. The district that your child is leaving may keep only a permanent record of the child's name, date of birth, sex, address and telephone, attendance, classes completed, grade and year completed and parents' names and citizenship status.

Limitation on Noncustodial Parents' Rights

All of the rights set out in this publication may not apply to you if you do not have custody of your child. Individual school districts have adopted policies denying access to school records for noncustodial parents whose parental rights have been legally terminated.

Ordinarily, school board policies assume that both the custodial and noncustodial parents have equal access to the child's school records unless the custodial parent has presented proof to the contrary. Such proof may take the form of an affidavit or certification of 1) the fact that parental rights have been terminated, 2) a request that access to school records be denied the noncustodial parent, or 3) conditions under which that parent may see the records. Additionally, a school board may require that copies of the relevant legal documents be supplied by the custodial parent.

If such a policy has been adopted by a local school board, a copy of that policy must be given you if you request it.

Right to Correct or Remove Records

The only kinds of information which a school district may keep on your child are those required by state law (personal identification data, attendance records, report cards, or other progress reports, medical records, and special education records for handicapped students) and those which your local board of education has authorized them to keep. They may not keep information which is not relevant to the child's education; in particular, the law forbids them to record data about you or your child's religious or political affiliations, or about the child's legitimacy. If the records contain comments by a teacher or other school employee, the comments must be based on the person's own knowledge or observation, rather than on hearsay or suspicion, and must be signed and dated by that person.

If you find information in your child's file which does not meet these requirements, or which is inaccurate or incomplete, you may ask the principal to have this information corrected or removed. You should put this request in writing, and be as specific as possible about what information you object to, why, and what you want done about it. If the principal does not agree to take the action you requested, you may take the steps listed under RIGHT TO A HEARING, below.

After your child leaves the school system, the system is required by law to keep certain kinds of information in a permanent record. This includes only the child's name, sex, date of birth, address, telephone number, grades, attendance records, classes attended, grade and year completed, parents' names and citizenship status. If the school system has your permission or is unable to locate you, it may destroy this information.

Right to Keep Others From Seeing Records

With certain exceptions, no one may see your child's records without your written permission. This permission must be obtained each time someone wishes to see the records. The exceptions to this rule are for the following people or agencies, if they need to see the records to perform their functions:

- Certified school personnel who have assigned educational responsibility for your child.
- Accrediting organizations.
- Staff of the State Department of Education.
- State protective services agencies.
- Bona fide researchers who have agreed in writing to keep the records anonymous and confidential.
- Persons who have obtained a court order to see the records, if three days' advance notice is given to you.

In the case of all these exceptions, except for school personnel, the school must keep a record of who was shown the records, the date and time, the reason, and the purpose for which the information will be used.

The list of exceptions does not include such persons as Board of Education members, town officials, or parents of your child's friends or classmates. These and other individuals may not inspect your child's records without your permission. See T.O. v. Bd. of Educ. of Clifton, 1981 C.O. Decis. _____ (#80-524, Jan. 22, 1981); S.L. v. Bd. of Educ. of Ringwood, 1980 C.O. Decis. _____ (#80-443, July 1, 1980).

Right to a Hearing

If your request to have records corrected or destroyed is refused, or if the school principal refuses to show you all the records or shows them to someone who should not be permitted to see them, you should write to the superintendent and ask for a hearing to resolve the disagreement. If the issue is not resolved at this meeting, you may appeal within 10 days by writing either the board of education or the Commissioner of Education in Trenton. The person to whom you appeal must give you a fair opportunity to present your side of the issue and must make a decision. If you choose to write to the board of education, it must decide within 20 days, after which you may still appeal to the Commissioner.

If, however, your child has been classified as handicapped, the procedures and timelines are somewhat different. You should notify the superintendent of schools of your challenge in writing. The superintendent has 30 calendar days after receiving your written request to meet with you, reach a decision, and provide you with a copy of that decision. If you are not satisfied, you should appeal by means of a special education due process hearing.*

In either case, if the result of your appeal is a decision not to change a record which you feel is inaccurate, incomplete, or misleading, you have a right to write a statement explaining your position, and to have your statement be made part of your child's records.

State Versus Federal Law

All of the rights discussed above are guaranteed under state law and most are also provided under federal law. The federal law commonly known as the Buckley Amendment, differs mainly from the state law in that it does not entitle you to copies of your child's records except under special circumstances, allows the school district 45 days instead of 10 to 25 days to comply with your request for access to records and does not outline the specific procedures involved in requesting a hearing. Otherwise, however, state and federal law run parallel to each other.

Right to Complain to Federal Government

If you believe that school officials have failed to comply with any of the rights guaranteed by the Buckley Amendment, you should send a written complaint to:

The Family Education Rights &
Privacy Act Office
Department of Education
330 Independence Avenue, S.W.
Washington, D.C. 20201

*This procedure is explained in detail in ELC's manual for parents of handicapped children, Special Rights for Special Children, available from Education Law Center in Newark.

Describe, in detail, the specifics which you believe constitute a violation of law. Give names and dates. After reviewing your complaint letter, the agency will notify school officials of your complaint and request a written statement from them. The agency will decide whether the law has been broken and send its written decision to the school officials and to you. If the Department of Education agrees that the law has been violated, it will tell school officials what they must do to comply and will set a timetable for compliance.

To assure implementation of the agency's instructions for compliance, monitor the school officials' action. If they do not comply within the deadlines, write another letter to the FERPA office. The Department of Education has the power to order termination of all federal funds due to the school's failure to comply with FERPA. However, this remedy will be ordered only after the district has had an opportunity to be heard in a formal hearing.

Your Child's Right to His or Her Own Records

Once your child reaches the age of 18, or earlier if the child leaves your home and is no longer supported by you, the rights described in this paper then belong to the child rather than to you; you would then need your child's written permission to see his or her school records. If, however, your child is over 18 and is still in the public school system and financially dependent on you, or if the child has been declared legally incompetent, you would continue to have these rights without your child's permission. A child between the ages of 16 and 17 who is graduating or quitting school may see his or her own records without your permission. Except in the case described above, however, your child has no right to see his or her own records without your consent.

Children Not In Public Schools

If your school district or some other public agency has placed your child in a private school, and is paying the tuition, all the rights described above still apply, and your public school district is responsible for seeing that they are enforced. If, however, you yourself have put your child in a private school, you are not entitled to these rights unless your agreement with the school provides for them or unless the school receives federal funds.

If your child is receiving his or her education from a state agency other than a school district, for example, a state school or juvenile facility, these rights apply to school records kept by that agency on your child.

Legal Sources of Rights

The federal law governing pupil records is the Federal Education Rights and Privacy Act (commonly known as the Buckley Amendment), 20 U.S.C. 1232g; its implementing regulations are found at 34 (formerly 45) C.F.R. Part 99.

New Jersey law on this subject is N.J.S.A.18A:36-19; regulations are at N.J.A.C.6:3-2.1 et seq.

Each local district is required to have its own written policy and procedures on student records. Copies of this policy, along with the state and federal laws, must be given to you if you request them.

DATED: October, 1984

The work resulting in this publication was conducted under grants from the Episcopalian Coalition for Human Needs, the Ford Foundation, the Fund for New Jersey, N.J. Bell, the Prudential Foundation, RCA, and the Roxiticus Fund. The views expressed do not necessarily reflect those of the funding agencies.

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